

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

MAR 24 9 20 AM '98

Federal Communications Commission

DA 98-507

DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Palestine and Frankston, Texas)

)
)
)
)
)
)
)

MM Docket No. 98-37
RM-9238

NOTICE OF PROPOSED RULE MAKING

Adopted: March 11, 1998

Released: March 20, 1998

Comment Date: May 11, 1998

Reply Comment Date: May 26, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Nicol/Excel Broadcasting, LLC ("petitioner"), permittee of Station KLIS(FM), Channel 244C2, Palestine, Texas, requesting the reallocation of Channel 244C2 from Palestine to Frankston, Texas, and the modification of Station KLIS(FM)'s construction permit to specify Frankston as its community of license. Petitioner states it will apply for Channel 244C2 at Frankston, if allotted.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules. This provision permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations: Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989) ("Community of License"), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). In support of its proposal, petitioner states that Frankston is an incorporated community which contains more than 137 businesses, including many that identify themselves with the community, such as; Frankston Farm and Ranch Supply, the Frankston Health Care Center, Frankston Lumber Company, and Frankston Reliance Gas Company. Petitioner also submits that the community possesses the civic, social, and commercial attributes necessary to form a distinct community. It contends that reallocating Channel 244C2 to Frankston will serve the public interest by

providing the citizens of Frankston with a first broadcast outlet for local expression. Moreover, petitioner claims that the adoption of its proposal will result in a net gain of service to 1,494 persons, while any loss in service by Station KLIS(FM) will not deprive Palestine of its sole local existing service.¹

3. We believe petitioner's proposal warrants consideration since it would not deprive Palestine of its only local aural transmission service and would provide Frankston with its first local aural transmission service. Nonetheless, since petitioner seeks to relocate its transmitter site, there will be areas which will lose existing reception service as well as areas which will gain new reception service. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." See Change of Community MO&O, 5 FCC Rcd at 7097. Therefore, although petitioner has provided some information in its proposal concerning increases in service, it is requested that petitioner provide more specific data regarding areas and populations which will gain and lose existing service if Channel 244C2 is reallocated to Frankston. The study should also indicate the number of reception services which are available within both the loss and gains areas.

4. Channel 244C2 can be allotted to Frankston consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules with a site restriction of 9.1 kilometers (5.7 miles) east.² We shall not accept competing expressions of interest in the use of Channel 244C2 at Frankston or require petitioner to demonstrate the availability of an additional equivalent class channel at Frankston.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Palestine, Texas	244C2, 252C2	252C2
Frankston, Texas	--	244C2

¹ Stations KNET-AM and KYYK(FM) are also licensed to Palestine.

² The coordinates for Channel 244C2 at Frankston are 32-02-02 NL and 95-24-30 WL.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 11, 1998, and reply comments on or before May 26, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John S. Logan
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.